



Department of Justice

City Center Building
1401 H Street, NW
Washington, DC 20530

May 20, 1999

Jeffrey Scott Lawless, Esquire
Travis, Pruitt & Lawless
207 East Mt. Vernon Street
Post Office Drawer 30
Somerset, KY 42502-0030

Re: *Comment on Proposed Final Judgment in United States, State of New York, et al. v. Waste Management, Inc., Eastern Environmental Services, Inc., No. 98 CV 7168 (JB) (E.D.N.Y., December 31, 1998)*

Dear Mr. Lawless:

This letter responds to your letter of March 26, 1999 commenting on the Final Judgment in this case on behalf of your client, the Pulaski County, Kentucky Solid Waste Management District. The Amended Complaint in this case charged, among other things, that Waste Management's acquisition of Eastern Environmental would substantially lessen competition in collection or disposal of municipal solid waste in 12 markets in New York, Pennsylvania, and Florida. The proposed consent decree, now pending in federal district court in Brooklyn, New York, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the markets alleged in the Complaint.¹ This relief, if approved by the Court, would establish one or more new competitors in each of the markets for which relief was sought, replacing the competitive rivalry lost when Waste Management acquired Eastern Environmental.

¹The markets alleged in the Amended Complaint, and for which divestiture relief was obtained in the Final Judgment, include the disposal of municipal solid waste in the Pittsburgh, Carlisle-Chambersburg, and Bethlehem, PA areas, and in New York City, NY (commercial and residential); and collection of commercial waste in the Carlisle-Chambersburg, Bethlehem, and Scranton, PA; suburban Tampa (Hillsborough Co.) and Miami/Ft. Lauderdale, FL (Dade and Broward counties) areas.

In your letter, you express concern that neither the complaint nor the proposed Judgment address the competitive effects of the merger in the collection and disposal of residential waste in Pulaski County, Kentucky. A combination of Waste Management and Eastern Environmental would control four of the five landfills within a 100 mile radius of Pulaski County.

The United States did not allege that a combination of Waste Management and Eastern Environmental would raise serious competitive problems in the collection and disposal of Pulaski County because the county has long-term agreements with Waste Management and with Eastern Environmental, which provide that the residential waste will be collected by Waste Management and that disposal of that waste will be handled by Eastern Environmental. These agreements, which do not expire until at 2002, effectively preclude competition between Waste Management and Eastern for the county's collection and disposal of waste. In addition, in this case, we believe that it would be difficult to predict what the competitive landscape will look like in 2002 when Pulaski County is once again in the market for a firm to collect and to dispose of its residents' waste. For that reason, we were not prepared to allege, or attempt to prove, that the proposed merger would be anticompetitive in Pulaski County, KY.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

/s/

J. Robert Kramer II
Chief
Litigation II Section